

§ 1.883-3

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owned by 5-percent shareholders during such days;

(ii) With respect to all qualified shareholders that own directly, or by application of the attribution rules in § 1.883-4(c), shares of the closely-held block of stock and that the foreign corporation relies on to satisfy the exception provided by paragraph (d)(3)(ii) of this section—

(A) The number of such qualified shareholders;

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under § 1.883-4(b)(2) (residence of individual shareholders) or § 1.883-4(d)(3) (special rules for residence of certain shareholders); and

(C) The number of days during the taxable year of the foreign corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock.

(5) Any other relevant information specified by Form 1120-F and its accompanying instructions.

[T.D. 9087, 68 FR 51406, Aug. 26, 2003, as amended by T.D. 9332, 72 FR 34606, June 25, 2007; T.D. 9502, 75 FR 56862, Sept. 17, 2010; 75 FR 63380, Oct. 15, 2010]

§ 1.883-3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883-1(c)(2) if it satisfies the qualified U.S. person ownership test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A foreign corporation that fails the qualified U.S. person ownership test of paragraph (b) of this section can satisfy the stock ownership test of § 1.883-1(c)(2) if it meets either the publicly-traded test of § 1.883-2(a) or the qualified shareholder stock ownership test of § 1.883-4(a).

(b) *Qualified U.S. person ownership test—(1) General rule.* A foreign corporation satisfies the qualified U.S. person ownership test only if the following two conditions are satisfied concurrently during more than half the days in its taxable year:

(i) The foreign corporation is a controlled foreign corporation (within the meaning of section 957(a)).

(ii) One or more qualified U.S. persons own more than 50 percent of the total value of all the outstanding stock of the foreign corporation (within the meaning of section 958(a) and paragraph (b)(4) of this section).

(2) *Qualified U.S. person.* For purposes of this section, a *qualified U.S. person* is a United States citizen or resident alien, a domestic corporation, or a domestic trust described in section 501(a), but only if the person provides the controlled foreign corporation an ownership statement described in paragraph (c)(2) of this section, and the controlled foreign corporation meets the reporting requirements of paragraph (d) of this section with respect to that person.

(3) *Treatment of bearer shares.* For purposes of paragraph (b)(1)(ii) of this section, any shares of the foreign corporation or of any intermediary corporation that are issued in bearer form, shall be treated as not owned by qualified U.S. persons if the bearer shares are not maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(4) *Ownership attribution through certain domestic entities.* For purposes of paragraph (b)(1)(ii) of this section, stock owned, directly or indirectly, by or for a domestic partnership, a domestic trust not described in section 501(a), or a domestic estate, shall be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders, respectively, under the rules of section 958(a), which shall be applied by treating each domestic entity as a foreign entity. Stock that is considered owned by a person under this paragraph (b)(4) shall, for purposes of applying this paragraph (b)(4) to such person, be treated as actually owned by such person.

(5) *Examples.* The following examples illustrate the qualified U.S. person ownership test of paragraph (b)(1) of this section:

Example 1. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. A domestic partnership owns

all of the outstanding stock of Ship Co for the entire taxable year. All of the partners in the domestic partnership are residents of foreign countries and not citizens of the United States. Ship Co does not satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because qualified U.S. persons do not own shares of Ship Co stock with a value that is greater than 50 percent of the total value of the outstanding stock of the corporation for at least half the days of Ship Co's taxable year. Therefore, to satisfy the stock ownership test of § 1.883-1(c)(2) and constitute a qualified foreign corporation, Ship Co must meet the qualified shareholder stock ownership test of § 1.883-4(a).

Example 2. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. Ship Co has a single class of stock outstanding. For Ship Co's entire taxable year, a foreign corporation (Corp A), that is wholly owned by a resident of a foreign country who is not a U.S. citizen, owns 40 percent of the outstanding Ship Co stock. During that same period, a domestic partnership owns the remaining 60 percent of the outstanding Ship Co stock. The domestic partnership is wholly owned by 20 United States citizens, each of whom owns a 5-percent partnership interest for Ship Co's entire taxable year. Ship Co meets the qualified U.S. person ownership test of paragraph (b)(1) of this section because during more than half the days in its taxable year it was a controlled foreign corporation within the meaning of section 957(a), and, applying the ownership attribution rules of paragraph (b)(4) of this section, qualified U.S. persons (the partners in the domestic partnership) owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares. Therefore, Ship Co will meet the stock ownership test of § 1.883-1(c)(2) if it satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section with respect to the partners in the domestic partnership. Alternatively, if four or more partners in the domestic partnership were not qualified U.S. persons, Ship Co would not meet the qualified U.S. person ownership test of paragraph (b)(1) of this section because, even though during more than half the days in its taxable year it would have been a controlled foreign corporation within the meaning of section 957(a), qualified U.S. persons would not have owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares during that period.

Example 3. Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) and is organized in a qualified foreign country. Ship Co has two classes of stock

outstanding, Class A representing 60 percent of the vote and value and Class B representing the remaining 40 percent of the vote and value of all the shares outstanding of Ship Co. The Class A stock is issued in bearer form and is maintained in a dematerialized book-entry system, as described in § 1.883-1(c)(3)(i)(G). The Class B stock is also issued in bearer form, but is not maintained in a dematerialized or immobilized book-entry system. For Ship Co's entire taxable year, a United States citizen A holds all the Class A stock and nonresident alien individual B owns all the Class B stock. Although the Class A stock is issued in bearer form, Ship Co will satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because the Class A stock is maintained in a dematerialized book-entry system on behalf of A. The Class B stock is not owned by a qualified U.S. person but is taken into account in determining the total value of Ship Co's outstanding stock. Alternatively, if the Class B stock were owned by a qualified U.S. person, the results would be similar. Class B stock would not be taken into account in determining if the qualified U.S. person ownership test were satisfied, but would be taken into account in determining the total value of Ship Co's outstanding stock.

(c) *Substantiation of CFC stock ownership—(1) In general.* A controlled foreign corporation must establish all of the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section by obtaining a written ownership statement (described in paragraph (c)(2) or (3) of this section, as applicable), signed under penalties of perjury by an individual authorized to sign that person's Federal tax or information return, from—

(i) Each qualified U.S. person whose ownership of stock of the controlled foreign corporation is taken into account for purposes of meeting the qualified U.S. person ownership test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust, or estate), and mere legal owners or record holders acting as nominees in the chain of ownership between each such qualified U.S. person and the controlled foreign corporation, if any.

(2) *Ownership statements from qualified U.S. persons.* An ownership statement from a qualified U.S. person must include—

(i) The qualified U.S. person's name, permanent address, and taxpayer identification number;

(ii) If the qualified U.S. person directly owns shares in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the qualified U.S. person, whether any shares are issued in bearer form, whether any bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person owned the shares;

(iii) If the qualified U.S. person indirectly owns shares in the controlled foreign corporation through a foreign or domestic intermediary described in paragraph (c)(1)(ii) of this section, the name of each intermediary, the amount and nature of the qualified U.S. person's interest in each intermediary, the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person held such interest, and, with respect to any intermediary foreign corporation, whether any shares are issued in bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(3) *Ownership statements from intermediaries.* An ownership statement from a domestic or foreign intermediary must include:

(i) The intermediary's name, permanent address, and taxpayer identification number, if any.

(ii) If the intermediary directly owns stock in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the intermediary, whether such shares are issued in bearer form and maintained in a demate-

rialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares.

(iii) If the intermediary indirectly owns the stock of the controlled foreign corporation, the name and address of each intermediary in the chain of ownership between it and the controlled foreign corporation, the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares, the percentage of its indirect ownership interest in the controlled foreign corporation, and, if any intermediary in the chain of ownership is a foreign corporation, whether any shares of such intermediary are issued in bearer form and if any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G).

(iv) Any other information specified in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(4) *Three-year period of validity.* The rules of § 1.883-4(d)(2)(ii) shall apply for determining the validity of the ownership statements required under paragraph (c)(2) of this section.

(5) *Availability and retention of documents for inspection.* The foreign corporation seeking qualified foreign corporation status must retain the ownership statements described in this paragraph (c) until the expiration of the statute of limitations for its taxable year to which the ownership statements relate. The ownership statements must be made available for inspection at such time and place as the Commissioner may request in writing in accordance with § 1.883-1(c)(3)(ii).

(d) *Reporting requirements.* A controlled foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883-1(c)(2) must include the following information (in addition to the information required by § 1.883-1(c)(3)) with its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation", filed for its taxable year. This information must be consistent

with the ownership statements obtained by the controlled foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The relative value of the shares of the controlled foreign corporation that are owned (directly, and indirectly applying the rules of paragraph (b)(4) of this section) by all qualified U.S. persons identified in paragraph (c)(2) of this section as compared to the value of all outstanding shares of the corporation;

(2) The period (or periods) in the taxable year during which such qualified U.S. persons held such shares;

(3) The period (or periods) in the taxable year during which the foreign corporation was a controlled foreign corporation;

(4) A statement as to whether the controlled foreign corporation or any intermediary corporation had bearer shares outstanding during the taxable year, and whether any such bearer shares taken into account for purposes of satisfying the qualified U.S. person ownership test are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(5) Any other information specified by Form 1120-F, and its accompanying instructions, or in published guidance by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

[T.D. 9502, 75 FR 56863, Sept. 17, 2010]

§ 1.883-4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883-1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders, as defined in paragraph (b) of this section. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the stock ownership test of § 1.883-

1(c)(2) pursuant to this section unless the foreign corporation meets the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) With respect to the category of income for which the foreign corporation is seeking an exemption, is—

(A) An individual who is a resident, as described in paragraph (b)(2) of this section, of a qualified foreign country;

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of § 1.883-2(a);

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country;

(E) An individual beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) that is administered in or by a qualified foreign country, who is treated as a resident under paragraph (d)(3)(iii) of this section, of a qualified foreign country; or

(F) A shareholder of a foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized, provided the United States has not waived the ownership requirement in the Air Services Agreement, or that the ownership requirement has not otherwise been made ineffective;

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section, unless such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in § 1.883-1(c)(3)(i)(G); and

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of